Supreme Court, U.S.
FILED
JUL 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

87-275

NO:

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

GERALD M. SPARKS,
PETITIONER

versus

CHARACTER & FITNESS COMMITTEE

TOMMY BELL - CHAIRMAN OF THE CFC
JUNIUS BEAVER, JR.
GRANT HELMAN
BILL BAIRD, III
STUART E. LAMPE
PAT GILL, SECRETARY TO THE BOARD
RESPONDENTS

---

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

---

GERALD M. SPARKS
113 WEST SOUTHERN HEIGHTS
LOUISVILLE, KY 40214
PHONE: (502) 368-1435
(502) 582-1347

FOR PETITIONER

## QUESTIONS PRESENTED

I. Did the U.S. Court of Appeals, 6th Circuit, fail to apply Supreme Court Case Law to this case thereby violating Appellant's 5th, 6th, 8th and 14th amendment rights when:

1. Appellant was never afforded notice of a hearing, nor was he ever given a due process hearing following his interview and subsequent rejection by the Character and Fitness Committee (CFC).

2. The Appellant was permitted to study, prepare and pay his fee to take the bar examination on four separate occasions, unaware of a "blackball" letter in his folder dating back to the 5-minute CFC interview of 1/28/80.

3. Appellant should have been informed of and given a copy of the letter issued by the CFC prohibiting him from ever being admitted to the Kentucky Bar.

4. No procedural or substantive due process was provided to Appellant.

5. The CFC interview should not provide one man with the legal right, after a 5-minute interview, to blackball an applicant without providing him with due process.

II. How can the Immunity Defense apply to the CFC when the CFC knew they were never going to pass the petitioner? Isn't it an administrative rather than a judicial function, and why was a new Kentucky Supreme Court rule written regarding immunity after suit was filed by Appellant?

III. Is the One-Man CFC Above the Law?

IV. Why didn't the Federal Court, in their opinion, address the issue of the petitioner finding a letter in his folder from day one, the day of his CFC interview, that he was never going to be passed on his exam.

## PARTIES TO THE PROCEEDING BELOW

All parties appear in the caption of the case in the 6th Circuit.

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Supreme Court Rules of Kentucky
1.060(Old rule in existence when CFC sued
by Appellant)

3.160(4) (New rule Appellees wrote after
Appellant filed suit)

Exhibits:

1. CFC letter regarding Appellant
2. Courier Journal article on sponsors
/mentors
3. Kentucky Supreme Court Rules
2.060
3.160(4)
4. Courier Journal article on FBI

_____

NO.

_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

GERALD M. SPARKS,
PLAINTIFF, APPELLANT

versus

CHARACTER AND FITNESS COMMITTEE
DEFENDANT, APPELLEE

---

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT

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# PETITION FOR CERTIORARI

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MAY IT PLEASE THE COURT:

The petition of the Appellant respectfully pleads that a Writ of Certiorari be issued to review the judgment and opinion of the Federal Court at the 6th Circuit entered in these proceedings on June 16, 1987.

## OPINION BELOW

The opinion of the 6th Circuit is cited as Sparks v. Character & Fitness Committee, _____ Southwestern 2d _____ (Ky. 1987).

## JURISDICTION

The judgment of the 6th Circuit, Federal Court, was entered on 6-16-87. This Petition for Certiorari to the Supreme Court, State of Kentucky, is filed herein within (90) days of the judgment below. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3) and United States v. Mendenhall, 446 U.S. 544, 64 L.Ed.2d 497, 100 S.Ct. 1870 (1980).

## CONSTITUTIONAL PROVISIONS INVOLVED

The 5th, 6th, 8th and 14th amendments. Namely, the right of a bar applicant to be entitled to A) Notice of a Due Process Hearing, and B) To have a Due Process Hearing.

It is certainly cruel and unusual punishment under the 8th amendment to allow a man to study and prepare for the Kentucky Bar Exam four times, take his money for the exam, and

know from day one he would never be passed on the exam.

The 6th amendment right of confrontation was never offered to the Appellant.

STATEMENT OF THE CASE

Appellant filed suit in Federal Court in Louisville, Kentucky. Plaintiff's Motion for Summary Judgment was granted; Appellant appealed to the 6th Circuit; during oral argument the three-judge panel told the Appellees, "You boys have no defense! Are you better than U.S. Congressmen? They have no immunity from civil liability; Are you better than the AMA (American Medical Association)?" The Federal Court told them the AMA has no immunity from civil liability. The Court said, "if you have a secretary, would she have immunity from civil liability?" The Court said the answer is "no". The only question the Federal Court asked the Appellant is "did you have notice of a hearing, and did you have a due process hearing." The answer was, "no, I

did not." The Federal Court stated one thing in open court and went behind closed doors one year later and gave the Character and Fitness Committee (CFC) immunity from civil liability. Now the Appellant appears before this respected Court and asked this Court to:

A) Waive him into the Kentucky Bar

B) Award him $650,000 in damages

STATEMENT OF FACT

This is a case of first impression before this respected Court. When this Court applies the law to the facts, this case should represent a landmark decision in this country.

For a brief summation of the facts. From day one, 1-28-80, the day of the Appellant's CFC interview, the Appellant was blackballed by the CFC interviewer, Junius Beaver, Jr., after a five-minute interview. Beaver arbitrarily and capriciously sent a letter to the Kentucky Board of Bar Examiners blackballing Appellant based on information that was supplied to Beaver by the Appellant. The letter was then

placed in applicant's folder preventing him from ever being passed on the Kentucky Bar Exam. Interviewing prospective bar members in the past has been a mere formality and, at best, represents an administrative function.

The Appellant never received any notice of a hearing, nor was any due process hearing afforded to the Appellant. The Kentucky Board of Bar Examiners took Appellant's money four times for the bar exam, knowing that because of a letter placed in his file, they never intended to pass him. This Appellant was in fact blackballed by his CFC interviewer and was never given a fair and equal opportunity of being passed.

The CFC willfully, wantonly, maliciously and intentionally violated the Appellant's basic and fundamental Constitutional rights. Appellant was never provided with a copy of the above letter and it was never intended for the Appellant to find the letter in his folder.

The Kentucky Supreme Court rule in exis-

tence when the Appellant sued the Appellees was Rule 2.060 entitled, Committee's Decision as to Eligibility. That rule says the decision of the Character & Fitness Committee as to the eligibility of an applicant for admission to the Bar of this state shall be final unless, on motion of the applicant filed within 60 days after notice of an adverse decision has been mailed to his last known address, the Supreme Court, upon review of the record, overrules such decision.

Beaver, Jr. was the Appellant's Character & Fitness Committee. He never gave the Appellant ANY NOTICE OF A HEARING, NOR DID HE PROVIDE HIM WITH A DUE PROCESS HEARING. He intentionally caused a letter to be placed in Appellant's folder preventing him from ever being passed on the Kentucky Bar Exam.
Not only did the Appellant find the letter in his folder that said, "Do not pass," when you read it in conjunction with the Kentucky Supreme Court rule in existence at the time the

letter was written, he also saw "Do not pass" written on the outside of his folder.

After the Appellant sued the appellees, a new Kentucky Supreme Court rule (3.160(40) was written in an attempt to obtain immunity from civil liability. Writing a new rule is an admission by a party opponent that they didn't believe they had immunity in the first place! The new Kentucky Supreme Court rule 3.160(4) which reads as follows:

"Neither the Kentucky Bar Association nor its officers, agents, delegates or members shall be liable to any member of the bar nor to any other person charged or investigated by said association, its officers, agents or delegates, for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial." The new rule appears to be unconstitutional because it provides for no due process.

If the Appellant was the first man they ever blackballed, why would they go to all the

time, trouble and expense of writing a new Kentucky Supreme Court rule?

Please consider these additional facts. Tommy Bell, the Chairman of the Character & Fitness Committee, told the Appellant after the Appellant found the letter in his file some three years after the letter was written, "we always intended to take your money for the Bar Exam, but we never intended to pass you!" Why would Mr. Bell make such a statement. He was arrogant and he thought he was untouchable! He gave the University of Kentucky $100,000 for 12 years as a gift. He thought I was a "little man" trying to be admitted to the Bar.

Consider these additional facts. Bar examiner, Stuart Lampe, told the Appellant, after the Appellant requested to see his exam paper "what is your exam number", the Appellant told him, then the bar examiner voluntarily said, "You passed my section," and indicated he had the Appellant's paper in one stack with all the other passing papers, and his non-passing

papers in a different location. When the Appellant asked why he only received 73 when 75 was passing since he had passed Lampe's section there was absolute dead silence; the bar examiner knew the Appellant's name, but he did not know his face when he came into the Bar Examiner's office unannounced. It was an old bar exam question the Appellant had in bar review course and he knew the answer like he knew the back of his hand.

Please consider this additional fact. There was an article that appeared in the Louisville Courier Journal in 1984 whereby the people that administer the Kentucky Bar Exam actually came out and admitted that if you have a sponsor or mentor when you take the Kentucky Bar Exam, you have a much greater chance of being passed; they also said you must pass the CFC before you can be admitted to the bar. This admission is discriminatory on its face! This would enable the CFC to maintain a private club if they wanted. Like any agency, the CFC

should be submitted to some kind of checks and balances system.

Over 30 states have now abolished Character & Fitness Committees because they serve no useful purpose. Presently, it does allow the one man during a five-minute interview to look at an applicant, and if he doesn't fit the physical image he wants a letter is placed in an applicant's folder preventing him from ever being passed. The five-minute interview was the first time Beaver had ever met the Appellant! Not only is it wrong, it is inherently wrong to place a letter in Appellant's folder and not provide him with any due process. In this country every man is supposed to have a fair and equal opportunity of passing a professional exam.

The Appellant has no criminal record; but he can show you 12 convicted felons practicing law in Kentucky, four of them are in Louisville.

## LAW AND ARGUMENT

Supreme Court Case Law, the Willner v. Character & Fitness Case at 373 U.S. 96 (1963) and the Louis v. Supreme Court of Nevada 490 F. Supp. 1174, are crystal clear; they hold that a prospective bar applicant must have A) notice of a hearing, B) a due process hearing so he can be confronted and explain away anything that the CFC thinks they have against the man. NO NOTICE, NO DUE PROCESS HEARING WAS EVER GRANTED IN THE APPELLANT'S CASE. Beaver arbitrarily and capriciously placed a letter on the Appellant's folder preventing him FROM EVER being passed on the Kentucky Bar Exam.

When an applicant's money is taken for a professional exam, he must be given a fair and equal opportunity of being passed! To allow the CFC immunity from civil liability would put them above the law and prevent them from being subject to any type of checks and balance system. Certainly they have no immunity when they violate a bar applicant's basic and

fundamental civil rights! To grant civil immunity to a man who merely exercises an administrative function by interviewing prospective bar members would circumvent the law and allow the CFC to practice discrimination legally. Even Chief Justice Robert Stephens of the Kentucky Supreme Court believes the CFC should not have immunity. See City of London vs. Gas Services Co., 687 S.W. 2 144. If anyone violates civil rights, they should be made to pay for violating those rights.

No man is this country is supposed to be above the law. The one man CFC has no power to hear cases, render written opinions, conduct trials, set bail, set bond, or impose sentencing. He only interviews prospective bar members and, therefore, he has no judicial immunity. Interviewing prospective bar members is purely an administrative function.

A professional exam is supposed to be based upon merit and not on who you know or

whether or not a letter has been placed in your file.

What gives one man the right, power and authority to place a letter in a man's folder without his basic and fundamental due process rights being granted? Beaver, Jr. clearly abused his discretion when he placed a letter in applicant's folder, blackballing the Appellant. This case should set a very big precedent in this country!

The Appellant asks that this not become a political decision as he has worked very hard for his education. A man's mind is a horrible commodity to waste! This case does in fact show that corruption exists within the administration of the Kentucky Bar Exam. Beaver has denied Appellant access to his chosen profession. How many other people have been treated in this manner and in how many other professions does this extreme and outrageous conduct exists?

Please allow this case to set a precedent

for those people that administer professional exams. They should be fair to all people, or be prepared to pay a price for violating an individual's basic and fundamental constitutional rights!

## CONCLUSION

For the reasons set out herein, this Honorable Court should and ought to issue its Writ of Certiorari to review the judgment and opinion of the 6th Circuit concerned herein.

Respectfully Submitted,

GERALD M. SPARKS
113 West Southern Heights
Louisville, Kentucky 40214
(502) 368-1435
(502) 582-1347

VERIFICATION

I, Gerald M. Sparks, hoping to be a member of the Bar of Kentucky and the person of record for Appellant in the above entitled matter.

I have read the foregoing petition and know the contents thereof.

I declare under penalty of perjury under the laws of Kentucky that the foregoing is true and correct. Executed on July 16, 1987 at Louisville, Kentucky.

Gerald M. Sparks

GERALD M. SPARKS

## APPENDIX

Appendix "A"
6th Circuit Opinion
Sparks v. Character & Fitness Committee
Judgement of Federal 6th Circuit
Entered on 6-16-87

Appendix "B"
Petition for Rehearing - Denied

I certify that all the appendices attached to the petition for Certiorari filed herein are true copies of what they purport to be.

Gerald M. Sparks

GERALD M. SPARKS

## STATEMENT OF MAILING

I, GERALD M. SPARKS, hereby certify that, on the 16 day of July, 1987, I served 3 copies of the foregoing petition by personally placing same in a sealed envelope first class postage thereon fulled prepaid in United States Post Office Mail box in Louisville, Kentucky, to each of the parties thereto, as follows:

1. To the United States Supreme Court, office of the Clerk, Washington, D.C. 20543, enclosing established filing fee; and

2. On appellees, through their counsel of record, John Valentine, 1200 One Riverfront Plaza, Louisville, Kentucky 40202 (3 copies given).

IT IS FURTHER certified that all parties required to be served have been served, and that the list of such parties is as set forth above.

Gerald M. Sparks

GERALD M. SPARKS

COUNTY OF JEFFERSON

STATE OF KENTUCKY

On July 14, 1987, before me the under signed, a Notary Public in and for said state, personally appeared Gerald M. Sparks, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Patsy C. Gatchell

Notary Public for said County and State

APPENDIX

A. SPARKS V. CHARACTER & FITNESS COMMITTEE
U.S. DISTRICT COURT, WESTERN DIST. OF KY
ORDER OF DISMISSAL

B. SPARKS V. CHARACTER & FITNESS COMMITTEE
6TH CIRCUIT OPINION
JUDGMENT OF FEDERAL 6TH CIRCUIT

C. PETITION FOR REHEARING - DENIED

APPENDIX A

ORDER OF DISMISSAL

CIVIL ACTION NO. 85-209

For the reasons set forth in the memorandum opinion this day entered, IT IS ORDERED:

1. Defendants' motion to dismiss is GRANTED; and,

2. Plaintiff's complaint is DISMISSED from the court's docket.

This is a final and appealable order and there is no just reason for delay.

DATED June 25, 1985

EDWARD H. JOHNSTONE, JUDGE
UNITED STATES DISTRICT COURT

APPENDIX A

NO. 85-5629

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

On appeal from the United States District Court for the Western District of Kentucky. Decided and Filed May 11, 1987.

Before: Engel, Krupansky and Ryan, Circuit Judges.

Ryan, Circuit Judge. Gerald Sparks appeals 'pro se' the district court's dismissal of his complaint against the Kentucky

Committee on Character and Fitness, its members, two employees hired by the Committee, one member of the Board of Bar Examiners, and the Chief Justice of the Kentucky Supreme Court. The district court held that the defendants were entitled to absolute judicial, or quasi-judicial, immunity from liability in appellant's 42 U.S.C. §1983 violations of his procedural and substantive due process rights, his equal protection rights, and his rights under the eighth amendment of the United States Constitution. He also alleged breach of contract, fraud and deceit.

Specifically, Sparks averred that in 1980, when he was first a candidate for admission to the Kentucky Bar, he was interviewed, pursuant to Kentucky Supreme Court Rule 2.040, by Junius J. Beaver, Jr., an associate member of the Committee. At the conclusion of the interview, Mr. Beaver addressed a letter to the Kentucky State Board of Bar Examiners stating that because Sparks was not possessed of the requisite character and moral fitness,

he could not recommend that Sparks take the upcoming Kentucky Bar Examination.

Sparks contends that despite Mr. Beaver's adverse recommendation, of which Sparks had no knowledge, "the powers that be still allowed him to take the Kentucky Bar exam four times ... knowing full well that the plaintiff had been blackballed." Sparks failed the bar examination three times; his fourth examination was never graded.

On April 17, 1985, the district court dismissed the action against defendant Robert F. Stephens, Chief Justice of the Kentucky Supreme Court, holding that the Chief Justice was entitled to absolute immunity because consideration of an application for admission to the bar is a judicial act for which a judge cannot be held liable in damages. On June 25, 1985, the court dismissed the action against the remaining defendants, finding:

> "The Kentucky Supreme Court has extensive authority over the Board of Bar Examiners and the Character and

Fitness Committee. Their members are appointed by the Supreme Court and the Court must approve the rules and regulations promulgated by those members. Supreme Court Rules 2.000 & 2.040. In addition, the court directs which subjects are to be tested and the minimum score needed to pass the examination. Supreme Court Rule 2.090. Finally, the court retains the final authority to determine who will be admitted to practice law in the State. Supreme Court Rule 2.060."

The court concluded that the functions of the Board of Bar Examiners and the Committee relating to Sparks' application for admission to the bar "cannot be divorced from the actions of the Supreme Court of Kentucky" and these activities are also "clothed with judicial immunity." The court ordered Sparks' complaint dismissed.

II

It is well-established that judges of

courts of general jurisdiction are immune from liability for their judicial acts. Bradley v. Fisher, 80 U.S. (13 Wall.) 335 (1871). Except for acts in the "clear absence" of jurisdiction, judicial immunity is absolute. Stump v. Sparkman, 435 U.S. 349(1978); King v. Love, 766 F2d 962 (6th Cir.), cert. denied, _ U.S._, 10-6 S. Ct. 351, 88 L.Ed. 2d 320 (1985).

While the defense of judicial immunity is very broad, it does not protect a judge in the performance of non-judicial acts, Lynch v. Johnson, 420 F.2d 818, 820 (6th Cir. 1970). In Sparkman, the Supreme Court stated:

> "The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity."

435 U.S. at 362. In the present case, the district court determined that the act of

evaluating an application for admission to the state bar is judicial in nature.

The power to determine who should practice before the courts has been aptly summarized by Chief Justice Taney:

> "And it has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed."

Ex parte Secombe, 60 U.S. (19 How.) 9, 13 (1856). This power is not only exclusive; it is inherently judicial. Simons v. Bellinger, 643 F.2d 774, 780 (D.C. Cir. 1980). Accord Louis v. Supreme Court of Nevada, 490 F. Supp. 1174, 1182 (D. Nev. 1980); Galahad v. Weinshienk, 555 F.Supp. 1201, 1204 (D.Colo. 1983). Moreover, in this case, the Kentucky Constitution charges the Kentucky Supreme Court with the duty to "govern admission to the bar and the discipline of members of the bar." Ky.

Const. of 1891, § 116 (1976).

The court's exercise of its inherent power to choose its officers is substantially determinative of the character and quality of our entire judicial system, state and federal. Our system of justice depends, in substantial measure, upon the service of competent and qualified attorneys. The decision whether to admit or deny an applicant admission to the bar, and thus to determine the composition and quality of the bar, affects both the quality of justice in our courts and the public's perception of that quality. The decision is therefore integral to the very essence of the judicial process.

The inherently judicial nature of the governance of the bar admission process is not diminished by the fact that an overburdened state supreme court delegates the admission of part of this responsibility to authorized persons. The Kentucky Supreme Court retains the ultimate authority to determine who will be admitted to practice law in the State of

Kentucky and who will not. Indeed, as his pro se brief indicates, Sparks was aware that the Kentucky Supreme Court had delegated its responsibilities in these matters to the Committee of Character and Fitness and the Board of Bar Examiners, and he does not question the validity of that delegation. Therefore, his expectations have clearly been satisfied. Sparkman, 435 U.S. at 362.

We hold that the act of considering an application for admission to the bar, particularly when that duty is imposed upon the judiciary by constitution, is a judicial act. When it is performed by a judge, he or she is entitled to absolute judicial immunity. Therefore, the district court was correct in dismissing the plaintiff's complaint against the Chief Justice of the Kentucky Supreme Court.

III

The question that next arises is whether the remaining defendants, who are not judges, nevertheless enjoy immunity for their activi-

ties in this matter. The "nonjudicial" defendants are the Kentucky Committee of Character and Fitness, its members, two employees hired by the Committee, and one member of the Board of Bar Examiners. Absolute judicial immunity "attaches to public officials who perform quasi-judicial duties" Campbell v. Patterson, 724 F.2d 41,43 (6th Cir. 1983), cert. denied, 465 U.S. 1107 (1984). It is "a general principle of the highest importance to the proper administration of justice that a judicial officer ... be free to act upon his own convictions, without apprehension of personal consequences to himself." Sparkman, 435 U.S. at 355. Public policy requires "absolute immunity ... for all persons - governmental or otherwise - who [are] integral parts of the judicial process." Briscoe v. Lahue, 460 U.S. 325, 335 (1983). In Campbell, we held that Michigan's Attorney General, obligated by statute to perform duties of a quasi-judicial nature, enjoys absolute immunity even when the action

taken is erroneous.

A survey of the case law reveals that public policy requires absolute immunity for public officials performing quasi-judicial functions in a number of circumstances. It has been granted to members of an attorney disciplinary committee, Simons, 643 F.2d at 780; to a state bar association conducting disciplinary proceedings, Clark v. State of Washington, 366, F.2d 678 (9th Cir. 1966); to lawyers serving on a mediation panel, Mills v. Killebrew, 765 F.2d 69 (6th Cir. 1985); to the court's clerk for acts within the scope of his quasi-judicial duties, Denman v. Leedy, 479 F.2d 1097 (6th Cir. 1973); to "friends of the court," Johnson v. Granholm, 662 F.2d 449 (6th Cir. 1981), cert. denied, 457 U.S. 1120 (1982); and to prosecutors engaging in prosecutorial activity, Imbler v. Pachtman, 424 U.S. 409 (1976).

In the present case, the district court determined that the Committee and Board of Bar Examiners were performing quasi-judicial

functions. In reaching this decision, the court relied on Hoover v. Ronwin, 466 U.S. 558 (1984). In Hoover, the plaintiffs, who had failed the Arizona Bar Examination, brought suit against the members of the Arizona Supreme Court Committee on Examinations and Admissions, alleging that the committee members had conspired to restrain trade in violation of the Sherman Act by artificially reducing the number of competing attorneys in Arizona. The Supreme Court determined that the actions of the committee members, in using a grading formula to determine admissions to the bar, could not be divorced from the actions of the Arizona Supreme Court. The Court noted that the members were appointed by the supreme court and the court "retained strict supervisory powers and ultimate full authority over its actions." Id. at 572. The Court concluded that the conduct challenged was "in reality that of the Arizona Supreme Court," and therefore, the committee members were absolutely immune from anti-trust

liability under the doctrine over sovereign immunity announced in Parker v. Brown, 317 U.S. 341 (1943). Hoover, 466 U.S. at 573.

Similarly, in the Simons case, two attorneys sued the members of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law. They alleged that the defendants maliciously harassed them during an illegal investigation of their law practice. The court concluded that the committee members' work was "functionally comparable to the work of judges. ... they serve as an arm of the court and perform a function which traditionally belongs to the judiciary." 643 F.2d at 781. The court held that the members of the committee were entitled to absolute judicial immunity.

In this case, there can be no doubt that the functions of the Committee and Board of Bar Examiners are, at least, quasi-judicial. Accord Childs v. Reynoldson, 623 F. Supp. 135 (D.C. Iowa 1985). The acts complained of in this case were performed by the defendants in

obedience to duties imposed upon them by the Kentucky Supreme Court which is charged under the Kentucky Constitution with the obligation to enact rules "govern[ing] admission to the bar and discipline of members of the bar." In response to this constitutional command, the Kentucky Supreme Court adopted Supreme Court Rule 2.000 creating the Board of Bar Examiners and describing its duties, and Rule 2.040 creating the Committee on CHaracter and Fitness, determining its composition, and defining its duties. These rules require, in sum, that the respective committees, their members and staff personnel, act on behalf of the Kentucky Supreme Court in administering procedures for admission to the bar of Kentucky and in determining the character and fitness of applicants as a condition precedent to admission. In executing these duties, the committee members and staff personnel act under the direct supervision of the Kentucky Supreme Court and in its name. Their activities cannot be separated from the actions of

the Supreme Court of Kentucky. The actions of the defendants in this case are, therefore, not only "functionally comparable" to judicial duties, they are the functional equivalent.

The act of considering an application to the bar is a judicial act. And it is no less a judicial act simply because it is performed by nonjudicial officers in whom the responsibility for the performance of such duties is lawfully delegated by the judiciary. Therefore, those who perform this duty on behalf of the judiciary are entitled to the same judicial immunity as would be enjoyed by judicial officers performing the same act.

The decision of the district court is AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

NO. 85-5629

Before: Engel, Krupansky and Ryan, Circuit Judges.

JUDGMENT

On appeal from the United States District Court for the Western District of Kentucky.

THIS CAUSE came on to be heard on the record from the said district court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said district court in this case be and the same is hereby affirmed.

Each party is to bear its own costs on appeal.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

(Filed May 11, 1987, issued as mandate 6/25/87)

APPENDIX C

ORDER

NO. 85-5629

Before: Engel, Krupansky and Ryan, Circuit Judges.

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

EXHIBITS

1. CFC letter regarding Appellant
2. Courier Journal article on sponsors /mentors
3. Kentucky Supreme Court Rules
   - 2.060 - Old Rule - Rule in existence when Respondents were sued by Petitioner
   - 3.160(4) - New Rule - Rule written after Respondents were sued by Petitioner

EXHIBIT I

(Letter on "Speckman & Beaver" letterhead, Lincoln Federal Building, South Fourth Street, Louisville, KY 40208)

January 28, 1980

Ms. Rosemary Puckett, Executive Assistant
Kentucky State Board of Bar Examiners
716 Lexington Building
201-215 West Short Street
Lexington, KY 40507

Re: Jerry Marshall Sparks

Dear Ms. Puckett:

I am enclosing herewith the application on the above named individual.

The Character and Fitness Committee may or may not be aware that I personally interview each applicant that I am sent to check.

In interviewing the above applicant the following information was supplied by him as a correction or change on his application.

1. He has been divorced, this took place in

Maryland and there is still a piece of real estate to be settled in the divorce action.

2. He has been arrested twice in the State of Maryland. He stated both were probated and were on warrants taken out by his wife while the divorce was in progress. He was arrested once for breaking and entering and once for assault.

3. Mr. Sparks stated he has taken the Maryland Bar Exam six (6) times and has not passed it. He has taken the Pennsylvania Bar Exam two (2) times and did not pass it.

He listed a Larry Stevenson of 1301 Vermont Road, Belair, Maryland, as an attorney reference, I attempted to call him, but there is not listing for an attorney in Belair by this name.

One of Mr. Sparks character affidavits is signed and then notarized by the same individual.

In interviewing Mr. Sparks he stated he gave false answers on his application knowingly but did so because he felt the Kentucky Bar would not let him take its exam if he gave

truthful answers.

Based on the above problems I can not recommend Mr. Sparks for the taking of the February 1980 Kentucky State Bar Exam.

If you have any questions, please advise.

Very truly yours,

Junius V. Beaver, Jr.,

Attorney

JVB:mms

Encls

(letter signed by Junius V. Beaver)

EXHIBIT 2

Quoted from an article in the Louisville Courier Journal, Saturday, May 12, 1984, entitled "State Bar Association Suggests 'Mentors' for Law Students":

" ... Under the proposal, all law students in the state would have to sign up with a 'mentor' a practicing attorney or judge with whom the student would meet as often as once a month during three years of law school.

The mentor would report on the student's 'character' to a bar committee that ultimate determines if the candidate is fit to practice law. ...

The mentor program is part of a sweeping act of proposals before the Kentucky Supreme Court that would reshape the way new attorneys are admitted to practice in the state. ...

Savage contends that regular evaluations by a mentor would be markedly superior to the

perfunctory five-minute interview with a 'character and fitness committee' that bar candidates now undergo - a session many lawyers regard as meaningless. ...

Those who failed to obtain mentors could still apply to be admitted to the bar, but their character and fitness would be subject to intensive investigation and scrutiny. ...

'The public already thinks we're a closed agency' Lampe said. 'This will make the public even more unhappy.'..."

EXHIBIT 3

Kentucky Supreme Court Rule 2.060:

"Rule 2.060 Committee's Decision as to Eligibility

The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the Bar of this State shall be final unless, on motion by the applicant filed within 60 days after notice of an adverse decision has been mailed to his last known address, the Supreme Court upon review of the record overrules such decision. (Amended effective January 1, 1978)"

"SCR 3.160(4):

"Paragraph (4) of SCR 3.160 shall read:

Neither the Kentucky Bar Association nor its officers, agent delegates or members shall be liable to any member of the bar nor to any other person charged or investigated by said association its officers, agents or delegates,

for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial."